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FEB 25 2008

OFFICE OF PETITIONS

In re Application of	:	
Mark A. FELKEY et al.	:	
Application No. 10/051,282	:	DECISION ON PETITION
Filed: January 22, 2002	:	
Attorney Docket No. WMA01001	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 09, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The two-month period for filing an appeal brief under 37 CFR 41.37 (accompanied by the fee required by 37 CFR 41.20(b)(2)), runs from the date of this decision.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed February 09, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). Accordingly, the application became abandoned on May 10, 2007.


The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal; (2) the petition fee of \$1540; and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

This application is being referred to Technology Center AU 3627 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.



David Bucci
Petitions Examiner
Office of Petitions

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